

**THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,	)	
	)	
v.	)	ID#: 0511009920A
	)	
CLEVELAND RICHARDSON,	)	
Defendant.	)	

Submitted: October 30, 2008  
Decided: January 28, 2009

**ORDER**

**Upon Defendant's Motion for Postconviction Relief – *DENIED***

Defendant challenges his trial lawyer's effectiveness, complaining that the lawyer failed to convey a pre-trial plea offer to him. The motion is procedurally proper, but Defendant fails to claim he would have taken the plea, and, considering the offer, he fails to show actual prejudice. The plea offer was far more harsh than Defendant believes.

1. On June 22, 2006, a jury convicted Defendant on Attempted Murder First Degree, Robbery First Degree, Burglary First Degree, Conspiracy Second Degree, and four counts of Possession of a Firearm During the Commission of a Felony. On October 31, 2006, the court denied Defendant's motion for judgment

of acquittal.<sup>1</sup>

2. Defendant was sentenced as a habitual offender<sup>2</sup> on November 17, 2006, to life, plus 142 years. Defendant appealed and the Delaware Supreme Court affirmed his conviction on July 24, 2007.<sup>3</sup> The mandate was received August 13, 2007.

3. Defendant's postconviction motion was timely filed on July 28, 2008, and properly referred.<sup>4</sup> Upon preliminary review, the court ordered the State and Defendant's trial counsel to respond. The last response was received on September 30, 2008. Although the court gave Defendant a 30 day window to reply,<sup>5</sup> he did not respond to the lawyer's and the State's submissions. And so, the record closed on October 30, 2008.

4. This case's facts were previously detailed by the court.<sup>6</sup> To summarize, Defendant and an accomplice committed a nighttime burglary on November 9, 2005. The homeowner was awakened by Defendant's presence in his bedroom. The homeowner armed himself and chased Defendant to the first floor.

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<sup>1</sup> *State v. Richardson*, 2006 WL 3094164, Silverman, J. (Del. Super.).

<sup>2</sup> 11 *Del. C.* § 4214(a).

<sup>3</sup> *Richardson v. State*, 931 A.2d 437 (TABLE) (ORDER).

<sup>4</sup> Super. Ct. Crim. R. 61(d).

<sup>5</sup> Docket Item 45 (ORDER).

<sup>6</sup> *State v. Richardson*, 2006 WL 3094164 at \*1.

There, the homeowner found himself in a gunfight with Defendant's accomplice, resulting in a serious injury to Defendant and the accomplice's death.

5. Defendant's sole claim for postconviction relief is that trial counsel was ineffective for failing to consult with Defendant before rejecting a plea offer. Defendant's argument focuses on a plea offered by the State on February 13, 2006, when Defendant was not present. Defendant claims the offer was for a "five-year minimum mandatory" sentence on the Burglary First Degree charge and one count of Possession of a Firearm During the Commission of a Felony. Significantly, Defendant does not state that if the opportunity to accept the plea had been presented to him, he would have taken it. More importantly, the record does not support Defendant's claim that the State made such an offer.

6. By affidavit, defense counsel recalls that the February 13<sup>th</sup> "Draconian plea offer" carried a "50-year mandatory sentence." Counsel states that Defendant was informed that the offer was unacceptable because, in effect, it carried the same outcome as a trial. Counsel believed a meritorious defense existed and, even if Defendant lost, Defendant was facing a life sentence either way. Further, counsel states that, although he detailed Defendant's options and the "Draconian" offer, he would not have taken the final decision away from his client.

7. The State agrees that Defendant was never offered the plea he claims was offered. In fact, the State contends that "[t]he best and only plea offered

to Defendant was Burglary First Degree and Possession [of a Firearm] During the Commission of a Felony with the understanding the State would seek habitual sentencing. . . .” According to the State, sentencing under 11 *Del. C.* § 4214(a) required a minimum of forty years to life, and the State “was seeking life.”

8. To succeed on an ineffective assistance of counsel claim, Defendant must show that: (1) trial counsel’s representation fell below an objective standard of reasonableness and (2) counsel’s conduct prejudiced Defendant.<sup>7</sup> Defendant must overcome the presumption that counsel’s representation was professionally reasonable.<sup>8</sup> In addition, prejudice must be shown and substantiated by concrete allegations.<sup>9</sup>

9. The court re-emphasizes counsel’s duty to convey all plea offers to the accused.<sup>10</sup> Nevertheless, even if Defendant could overcome the first *Strickland* prong, he does not show that he was prejudiced. Defendant does not claim that he would have accepted a plea offer, much less the actual offer, had he known about it. Far more importantly, it does not appear that the plea Defendant refers to was ever

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<sup>7</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

<sup>8</sup> *Id.* at 689.

<sup>9</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

<sup>10</sup> *MacDonald v. State*, 778 A.2d 1064, 1071 (Del. 2001) (“An attorney has an obligation to fully communicate to his or her client the terms and conditions of proffered plea bargains in criminal cases.”).

in the offing. Taking the crimes, Defendant's record, the Rule 61 submissions, and Defendant's failure to reply to them into account, it is difficult to believe that an offer to two, minimum sentences was made.

10. Further, Defendant does not show how, assuming that trial counsel failed to pass along the actual plea offer, Defendant was prejudiced by the final outcome. Defendant is essentially in the same position he would have been in had he accepted the actual plea offer.

11. For the foregoing reasons, Defendant's first motion for postconviction relief is **DENIED**.

**IT IS SO ORDERED.**

/s/ Fred S. Silverman

Judge

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cc: Prothonotary

James Kriner, Deputy Attorney General  
Cleveland Richardson